

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Hearing Officer Notice Soliciting Comments on Whether the  
Department Should Open an Investigation to Establish an Instate  
Universal Service Fund

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D.T.E. 03-45

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.**

Sprint Communications Company L.P. (“Sprint”) respectfully submits these Comments in response to the Hearing Officer Notice Soliciting Comments on Whether the Department Should Open an Investigation to Establish an Instate Universal Service Fund (“Notice”).

**INTRODUCTION AND SUMMARY**

The Department invited all interested persons to file written comments regarding (1) whether the Department has sufficient statutory authority under existing federal and state statutes to establish a USF for the Commonwealth; and, if so, (2) whether the Department should initiate an investigation into the establishment of a USF for the Commonwealth. The Department has federal statutory authority but lacks express state statutory to establish a universal service fund (“USF”) for the Commonwealth of Massachusetts. The Department should not initiate an investigation into the establishment of an in-state USF until it has the requisite state statutory authority to establish an in-state USF.

**A. The Department Lacks Explicit State Statutory Authority to Establish an In-State USF**

The Telecommunications Act of 1996 confers broad powers upon states to adopt universal service rules that are consistent with the federal rules:

A State may adopt regulations not inconsistent with the [FCC's] rules to preserve and advance universal service. . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.<sup>1</sup>

To date, the Massachusetts legislature has not adopted regulations consistent with this federal statute. Sprint concurs with the Notice that the Department's enabling telecommunications statutes do not contain such an explicit grant of authority to create a USF in Massachusetts.<sup>2</sup> The Department does, however, have "general supervision and regulation of, and jurisdiction and control over . . . (d) [t]he transmission of intelligence within the commonwealth by . . . means of telephone lines . . . or any other system of communication."<sup>3</sup> The Department also has a statutory duty to ensure that all charges demanded or received by any common carrier for any service rendered or performed are just and reasonable.<sup>4</sup> Establishing an in-state universal service support mechanism to "reduce the arbitrage opportunities and the price squeeze problems presented by the interaction of deaveraged wholesale prices and averaged retail prices"<sup>5</sup> is arguably consistent with the Department's general jurisdiction, regulation and control over the transmission of intelligence over telephone lines and its duty to ensure that

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<sup>1</sup> 47 U.S.C. § 254(f).

<sup>2</sup> Notice at 2.

<sup>3</sup> M.G.L.A. c.159, § 12.

<sup>4</sup> M.G.L.A. c.159, § 17.

<sup>5</sup> Notice at 2, *citing* D.T.E. 01-31, Phase II Order at 83 (April 11, 2003).

telecommunications services rates are just and reasonable. The Department's statutory authority under Massachusetts law to establish an in-state universal service fund, however, is not explicit.

Although the Department has express authority to establish a separate Department of Telecommunications and Energy Trust Fund,<sup>6</sup> the purpose of this fund is to reimburse the Commonwealth for funds appropriated by the general court for the operation and general administration of the Department.<sup>7</sup> This statutory purpose is quite different than preserving and advancing universal service.

The Maine Public Utility Commission recently enacted an in-state universal service fund, but it had express state statutory authority to do so. Maine statute, 35-A M.R.S.A. § 7104.3, specifically requires the development of rules to implement universal service and “may require providers of intrastate telecommunications services to contribute to a state intrastate universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996....” This statute requires, among other things, that the state USF requirements “maximize federal assistance available to the State for universal service purposes . . . meet the State's obligations under the federal Telecommunications Act of 1996 . . . be consistent with the goals of the federal Telecommunications Act of 1996 . . . and ensure that any requirements regarding contributions to a state universal fund be nondiscriminatory and competitively neutral.” 35-A M.R.S.A. § 7104.3.A-D.

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<sup>6</sup> M.G.L.A. c.25, § 12O.

<sup>7</sup> M.G.L.A. c.25, § 18.

While the Department could attempt to establish a USF for the Commonwealth without explicit state statutory authority, the more prudent approach would be to obtain explicit statutory authority to do so from the legislature first.

**B. It is Premature to Initiate An Investigation Into the Establishment of an In-State USF**

It is premature for the Department to initiate an investigation into the establishment of an in-state USF without explicit statutory authority to do so. Instead, the Department should initiate an investigation after it has explicit state statutory authority to establish an in-state USF.

**CONCLUSION**

For the forgoing reasons, the Department should not initiate an investigation into the establishment of an in-state USF until it has explicit state statutory authority to do so.

June 18, 2003

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

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